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Docket No.: M4065.0451/P451-B  
(PATENT)

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Patent Application of:  
R. J. Baker

Application No.: 10/674,550

Confirmation No.: 5735

Filed: October 1, 2003

Art Unit: 2824

For: Resistive memory element sensing using  
averaging

Examiner: A. Q. Tran

**RESPONSE TO RESTRICTION REQUIREMENT**

MS Amendment  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Dear Sir:

In response to the restriction requirement set forth in the Restriction Requirement mailed December 13, 2004 (Paper No. 12082004), applicant hereby provisionally elects claims 28-33 for continued examination, with traverse.

Restriction has been required between the following:

Group I, claims 28-33, drawn to a method of determining a value of a resistance;

Group II, claims 34-37, drawn to a method of measuring the value of a resistance;

Group III, claims 38-39, drawn to a method for sensing a value of a resistance;

Group IV, claims 40-42, drawn to a method of measuring a resistance of a resistor;

Group V, claims 43-46, drawn to a method of measuring an impedance;

Group VI, claims 47-51, drawn to a method of making a memory integrated circuit; and

Group VII, claim 52, drawn to a device state sensing circuit.

The Restriction Requirement states that the claims of Groups I, II, III, IV, V, VI, and VIII recite inventions that are unrelated. Inventions are unrelated if it can be shown that they are not disclosed as capable of use together and they have different modes of operation, different functions, or different effects (MPEP §§ 806.04 and 808.01). The Restriction Requirement states that the claims of Groups I to V recite distinct methods of using a product encompassing mutually exclusive elements or features; while on the other hand, the claims of Group VI and VII respectively recite a method for making memory integrated circuit and a device state sensing circuit. Further, the Restriction Requirement states that because these inventions are distinct for the reasons given above, and have acquired a separate status in the art as shown by their different classification and because of their recognized divergent subject matter, restriction for examination purposes as indicated is proper. Applicant respectfully traverses the restriction.

Determinations of restriction require a two-tiered analysis. The Commissioner may require restriction if two or more independent and distinct inventions are claimed in a single application (37 CFR 1.142(a)). In addition, “there must be a serious burden on the examiner.” (MPEP § 803) In the present case, the Restriction Requirement provides no indication that the search and examination of the claims in this application would present a serious burden on the examiner. If the search and examination of an entire application can be made without serious burden, the examiner must examine it on the merits, even though it includes claims to independent or distinct inventions (MPEP § 803). Further, although

the claimed subject matter may be classified in different classes or subclasses, the Patent Office has not met its burden of showing that the inventions are independent or distinct.

The Restriction Requirement does not meet the burden of showing that the inventions are independent or distinct. The Restriction Requirement contains a statement without explanation that the inventions of Groups I to VII are unrelated. However, the inventions are disclosed in the application as being related. Further, with respect to the claims of Groups I to V, the Restriction Requirement contains only an unsupported statement that the claims recite “distinct methods of using a product encompassing mutually exclusive elements or features.” The Restriction Requirement does not explain, however, which features or elements are “mutually exclusive,” for example. There is no showing in the Restriction Requirement that the inventions disclosed are not capable of being used together or are otherwise distinct. With respect to the claims of Group VI and VII, the Restriction Requirement merely states that they “claim a method for making a memory integrated circuit and a device state sensing circuit.” The Restriction Requirement contains no explanation as to how or why the claimed inventions are unrelated. Applicant respectfully requests substantiation of the restriction in greater detail. Otherwise, it is respectfully requested that the Restriction Requirement be withdrawn, and that each of the claims presently pending in this application be examined.

Moreover, the Restriction Requirement contains no indication of the second requirement for restriction that the examination of this application would be burdensome. In particular, Applicant notes that Groups I, III, VI, and VII are all classified in Class 365. The Restriction Requirement makes no indication that the search of these four groups will be a burden, or that the fields of search are different. Rather, it appears that there will be substantial overlap and duplication in the search and examination of the claims in these groups if restriction is required. Withdrawal of the restriction, particularly as to these four Groups I, III, VI, and VII, respectfully is solicited.

Similarly, Applicant notes that Groups II, IV, and V are all classified in Class 324. Moreover, Groups II and IV are classified in subclasses 713 and 691, respectively,

which are indented below the Group V subclass 600. The Restriction Requirement has no indication that a search of prior art or examination of claims in these three related groups will be burdensome. Rather, it appears that there will be significant overlap and duplication in the field of search and examination of the claims in these groups if restriction is required. Withdrawal of the Restriction Requirement, particularly as to these three Groups II, IV, and V, is respectfully solicited.

In view of the remarks above, reconsideration and withdrawal of the requirement for restriction are urged.

Dated: December 23, 2004

Respectfully submitted,

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